

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of JOAN and JIMMY L.
WALLER.

JOAN WALLER,

Respondent,

v.

JIMMY L. WALLER,

Appellant.

F063800

(Super. Ct. No. S-1501-FL-598483)

OPINION

APPEAL from an order of the Superior Court of Kern County. John L. Fielder,
Judge.

Kilpatrick & White and Michael R. Kilpatrick for Appellant.

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, Catherine E. Bennett
and Thomas V. DeNatale, Jr. for Respondent.

-ooOoo-

Appellant, Jimmy L. Waller (Husband), challenges the trial court's order finding that the tax liability incurred by Kern Power Systems, Inc. (Kern Power), a corporation jointly owned by Husband and respondent, Joan Waller (Wife), is the debt of the corporation, not a community debt. Husband contends that the trial court erred when it refused to disregard the corporate entity. According to Husband, the tax liability should be the obligation of both parties because Wife benefitted from the business during the parties' marriage.

The trial court appropriately characterized the tax liability as a corporate debt. Accordingly, the order will be affirmed.

BACKGROUND

Husband and Wife separated in June 2006, after a marriage of over 33 years. During the marriage, Husband operated Kern Power. Kern Power was operated solely by Husband and his expertise was required for its operation. Husband and Wife are the only shareholders in Kern Power, a California corporation. The Kern Power stock is a community asset.

Both during the marriage and after separation, Husband failed to pay Kern Power's payroll taxes and corporate income taxes to both the Internal Revenue Service and the Franchise Tax Board. As of November 2010, Kern Power owed approximately \$309,000 to the Franchise Tax Board and approximately \$557,000 to the Internal Revenue Service. Wife declared that she did not become aware of Kern Power's tax liability until July 2010.

In July 2006, the parties stipulated to a support order. In 2010, Husband stopped paying support. Thereafter, Husband sought modification of the support order and requested a finding that Wife was responsible for one-half of the tax debt incurred between 2003 and the present. Husband argued that the court should disregard the corporate entity and treat Kern Power as a sole proprietorship, making the tax liability a community debt.

The trial court bifurcated the issue of the characterization of the corporate tax liability. The parties agreed that the court could decide this issue based on the declarations and briefs.

The court issued a tentative decision which became the statement of decision. The court ruled that the tax liability was a corporate debt. The court explained that if it were to adopt Husband's position, it would allow Husband to pierce his own corporate veil, making the corporate entity a sham. The court further noted that Husband cannot benefit from his own claimed wrongdoing.

Thereafter, the trial court filed a certificate for immediate review regarding the corporate tax liability issue. The court stated:

“Because the above Order regarding Corporate tax liability is not subject to direct appeal, I do hereby certify that such Order is of such importance that immediate review should be had by the Court of Appeals. The resolution of this issue will simplify the remaining issues in dispute and which will lead to settlement of the entire case.”

DISCUSSION

This order on a bifurcated issue is not separately appealable. However, the trial court certified that there was probable cause for immediate appellate review of the issue pursuant to Family Code section 2025. Accordingly, we have jurisdiction to hear this appeal and find that review is appropriate. (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1433.)

Husband argues the trial court erred in refusing to disregard Kern Power's status as a corporate entity and treat it as a sole proprietorship for purposes of determining the interests of the parties in the corporation. In other words, Husband claims that Kern Power is his alter ego. According to Husband, the community benefitted from Kern Power's failure to pay the taxes and thus that tax liability should be deemed a community debt.

In general, a corporation is a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations.

(*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)

Nevertheless, a corporate identity may be disregarded, i.e., the “corporate veil” pierced, when necessary to redress fraud, protect the rights of third persons, or prevent a palpable injustice. (*Ibid*; *Kohn v. Kohn* (1950) 95 Cal.App.2d 708, 718.) Thus, under the alter ego doctrine, the court will ignore the corporate entity when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose. (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 538.)

The alter ego doctrine usually arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff’s interests. (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.)

Whether the alter ego doctrine will be invoked depends on the circumstances of each case. Nevertheless, there are two general requirements. (*Ibid.*) First, there must be such unity of interest and ownership that the separate personalities of the corporation and the individual do not in reality exist. Second, there must be an inequitable result if the acts are treated as those of the corporation alone. (*Ibid.*) “Before a corporation’s obligations can be recognized as those of a particular person, the requisite unity of interest and inequitable result must be shown.” (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 411.)

Accordingly, the corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require. (*Mesler, supra*, 39 Cal.3d at p. 301.)

A piercing of the corporate veil is usually sought by third parties in order to fasten liability on individual stockholders. Further, incorporators are usually precluded from ignoring their own deliberately chosen corporate form. (*In re Marriage of Imperato* (1975) 45 Cal.App.3d 432, 439-440.) However, there are exceptions where corporate entities have been disregarded at the urging of a stockholder in special situations,

including in the context of a marital dissolution, providing the facts support the alter ego theory. (*Id.* at p. 440.) For example, in *Imperato*, the court disregarded the corporate entity in order to fairly apportion the property to account for one spouse's post-separation efforts that increased the value of a community property asset. (*Id.* at pp. 439-440.)

Here, Husband contends that if his failures to pay Kern Power's taxes when due are treated as acts of the corporation, an inequitable result will follow and thus the alter ego doctrine should be invoked. Husband reasons that Wife benefitted from these acts and thus the tax liability should be a community debt.

Husband correctly points out that courts have classified debts arising from one spouse's tort or criminal act as community debts. However, a prerequisite for such a classification is a finding that the community benefitted from the tort or the crime. In *In re Marriage of Hirsch* (1989) 211 Cal.App.3d 104, the court concluded that, because the acts that led to the husband's liability for negligence benefitted the community, the amount paid in settlement of a lawsuit filed against the husband was a community obligation. (*Id.* at pp. 110-111.) Similarly, in *In re Marriage of Bell* (1996) 49 Cal.App.4th 300, the court found that the settlement paid as a result of the wife's embezzlement was a community obligation because the evidence was clear that the embezzled funds had been put to community use. (*Id.* at p. 310.)

Here, there is no evidence that the community benefitted from Husband's failure to pay the taxes owed by Kern Power. In fact, the majority of the tax liability was incurred after the parties separated. Husband claimed below that the community benefitted from Kern Power's failure to pay taxes but did not support this assertion with any evidence. Such an unsupported assertion does not become a fact on appeal simply by repetition. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379.)

Under these circumstances, it is not inequitable to classify the tax liability as a corporate debt. Accordingly, the trial court properly rejected Husband's claim that Kern Power is his alter ego.

DISPOSITION

The order is affirmed. Costs on appeal are awarded to respondent.

LEVY, Acting P.J.

WE CONCUR:

GOMES, J.

DETJEN, J.